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points presented, and the processes of reasoning, upon the authorities examined and the facts in proof, which lead me to the conclusion I have announced. But as an appeal lies to the Circuit Court, and as it seems to me not improbable that the petitioners may desire the judgment of that court upon the principal question involved (now for the first time, so far as I can learn, distinctly raised in a federal court), I refrain from saying anything in support or vindication of my judgment. I have only to add, and this from abundant caution, that my ruling in this matter is not to be received or represented as *pro forma* merely, on the contrary, it is the result of deliberation and research.

It may not be unprofitable to add, that upon a question not raised at the bar, viz.: Whether the admiralty has jurisdiction of a suit *in rem* for average contribution, the inquirer may, with great advantage, consult 7 Howard, 729; 2 Curtis, 77; 19 Howard, 171; 1 Sprague's Decisions, 135 to 144; 8 Howard, 615 (appendix), and 6 McLean, 576. As to this point, I here express no opinion.

The petition is dismissed, with costs.

United States District Court, District of Wisconsin.

THE UNITED STATES v. ALPHONSO PRESCOTT, ET AL.

In an indictment under Sect. 44 of the Bankrupt Act, for fraudulently obtaining goods on credit, the proceedings in the Bankrupt Court must be pleaded and proved with such particularity as to show affirmatively that an adjudication of bankruptcy was made upon a case in which the court had jurisdiction.

The indictment therefore should set out the filing of the petition, the name of the petitioning creditor, the amount of his debt, the alleged act of bankruptcy and the adjudication of the Bankrupt Court.

The description of the goods obtained must be as certain as it can reasonably be made. It should be as definite as would be required in a declaration in trover.

Offences under Sect. 44 are misdemeanors, and the word "feloniously" should not be used.

This was a motion to quash an indictment under Sect. 44 of the Bankrupt Act, for fraudulently obtaining goods on credit.

James G. Jenkins, for the motion.

Hazleton, District Attorney, contra.

MILLER, D. J.,—The first count of the indictment charges that on a certain day mentioned, in the District Court of the United States, for the District of Wisconsin, under and pursuant to an Act of Congress, entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, proceedings in bankruptcy were duly commenced against Alphonso Prescott, Leander F. Snyder and R. H. Lovell (whose full Christian name is to the said grand inquest unknown), as insolvent debtors, and partners under the name of Prescott, Snyder and Lovell, who thereupon afterwards, *to wit*, on a certain day mentioned, were adjudged bankrupts; that prior to the dates last aforesaid, and within three months before the commencement of said proceedings in bankruptcy, *to wit*, on the 16th day of August, 1869, within the jurisdiction of this court, and at and in the District of Wisconsin, the said Alphonso Prescott, Leander F. Snyder and R. H. Lovell, then and there representing themselves to be associated together as copartners, under the firm of Prescott, Snyder and Lovell, and holding themselves out as wholesale merchants and jobbers of boots and shoes, under the false color and pretence of carrying on business and dealing in the ordinary course of trade of wholesale boot and shoe merchants and jobbers, did then and there wrongfully, unlawfully and feloniously obtain on credit, from one Lyman Dike, certain goods and chattels, *to wit*, a large quantity of boots and shoes, of the value of five thousand dollars, with the intent then and there by the obtaining of said goods and chattels, to defraud the said Lyman Dike, contrary to the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

There are other like counts of the indictment, except as to the names of persons from whom goods had been obtained by defendants.

It is alleged in the motion to quash the indictment that it is defective in not setting forth the manner in which the proceedings in bankruptcy were commenced, and also in the description of the goods, &c.

The court exercises jurisdiction in bankruptcy as limited by the act; and proceedings must be commenced and prosecuted substantially as the act directs. Neither as to the proceedings, nor the jurisdiction, of the court in bankruptcy, is it sufficient in an indictment under the act to rely merely upon a general averment. All matters necessary to constitute the offence must be pleaded. It is not sufficient as in this indictment to aver that proceedings in bankruptcy were duly commenced. It must be pleaded and proven in order to convict, that a petition in bankruptcy was presented to the District Court by a certain creditor, naming him, and also the amount of the debt of such petitioning creditor, and the alleged cause of bankruptcy, and the adjudication of bankruptcy. It must appear affirmatively that the creditor had a right under the law to commence and prosecute proceedings in bankruptcy. The amount of his debt must appear, otherwise the court would have no jurisdiction.

Of the Bankrupt Consolidated Act of 12 and 13 Victoria, section 44 of the act under which the indictment in question was framed, is almost a literal copy. Several decisions of courts in England, as to requirements in the prosecution and trial of indictments under their act, were made and published before the passage by Congress of our Bankrupt Act, and to which I refer as proper for consideration: *Regina v. Lands*, 33 English Law and Eq. Reports, 536; *Regina v. Ewington*, 41 English Common Law Reports, 178; *The King v. Jones*, 24 Idem 156. It must appear that the bankrupt obtained goods within three months of the bankruptcy, by means of a representation which he knew to be false, that he was carrying on business and dealing in the ordinary course of trade, and such representations must be actually made by him: *Regina v. Boyd*, 5 Cox, 502.

The description of the goods obtained by defendants is too uncertain; instead of a large quantity of boots and shoes, a certain number of pairs of boots and also of shoes, or a certain

number of packages in boxes of boots, and also of shoes should be described. This could be ascertained from the bills of sale. The description of the goods in an indictment should be as definite as in a declaration in trover.

The word feloniously should be omitted in indictments under the act. The offences made indictable are misdemeanors. And in drawing indictments, figures for dates should not be used.

This being the first indictment in this court under the Bankrupt Act, I have prepared this opinion as a guide to the District Attorney in future.

The indictment will be quashed.

Court of Errors and Appeals of Mississippi.

McGUIRE v. STEVENS, ET AL.

Specific performance of a contract to sell land cannot be decreed unless the contract identifies the land, or furnishes the means of so doing.

Under the statute of frauds, parol evidence is not admissible to supply the want of such identification of the land in the written contract.

Parol evidence of what parties to a written contract *intended to express* is not admissible. Where parol evidence is received at all to explain written instruments, it is to explain what was *really expressed*.

A bill in equity to enforce a parol contract for the sale of land, cannot be maintained in Mississippi, and part performance will not take a parol sale of lands out of the statute of frauds.

In 1863 one Charles M. Stevens contracted with the appellant to sell him a lot of land, the title to which was in the appellee, James O. Stevens. Certain receipts of the said James O. Stevens and Charles M. Stevens acknowledging the receipt of certain sums of money from the appellant in part payment for a house and lot, without designating the same or referring to anything by which they could be ascertained were the only evidence in writing of the contract.

The appellant filed his bill in chancery for a conveyance of said lot to him, and for an injunction to restrain the prosecution of an action of ejectment against him by the appellee, Jane E. Stevens to whom the said property had subsequently been con-